August 13, 2009

Division of Global Migration and Quarantine
Centers for Disease Control and Prevention
United States Department of Health and Human Services
Attn: Part 34 NPRM Comments
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Also submitted electronically via email to Part34HIVcomments@HHS/CDC.gov and at http://regulations.gov

Docket No.: HHS/CDC-2008-001
Docket Title: Medical Examination of Aliens – Removal of Human Immunodeficiency Virus (HIV) Infections from Definition of Communicable Disease of Public Health Significance

Dear Secretary Sebelius:

We write to you today in support of the Department of Health and Human Services/Centers for Disease Control and Prevention's proposal to remove HIV from the list of communicable diseases of public health significance and to eliminate HIV testing from the U.S. immigration medical screening process. We urge you to move quickly to vacate a policy that has proven to be a menace to individual and public health, a threat to human rights, and an accomplice to too many deaths since its adoption in 1987. We have worked a long time toward this day and are grateful for the opportunity to submit the following comments.

As the proposed rule change rightfully notes, there is neither scientific basis nor public health rationale for banning the entry, stay, or residency of HIV-positive people. At a moment in history when it would be easy to scapegoat immigrants and long-term visa seekers with HIV, we were especially gratified to see the HHS/CDC reiterate in its fact sheet that the "risk posed by HIV-infected people is not a result of their nationality, but is based on specific risk behaviors."

In 2006, we founded the Coalition to Lift the Bar to oppose a policy at odds with scientific knowledge and with human rights principles. Indeed, the HIV entry, stay, and residence bar is, at its core, a violation of human rights as enumerated by the International Covenant on Civil and Political Rights, the UN Declaration of Human Rights, and the United Nations guidelines on HIV/AIDS and human rights, including **freedom of movement** (detaining and/or restricting the movement of individuals solely because of their HIV status); **right to privacy** (disclosing the results of mandatory HIV tests to various immigration officials and to green card applicants' sponsors, family members, and others present at immigration interviews; announcing via waiver stamps in their passports travelers' HIV status to border officials, family, traveling companions, employers, and miscellaneous authorities requiring state-issued identification); and **freedom from discrimination**: (excluding individuals with HIV without legitimate

justification – UN human rights guidelines state that restricting movement or choice of residence based on HIV status is discriminatory and unjustifiable on public health grounds). Further, in making it next to impossible for immigrants with HIV to obtain legal permanent residency status, the current policy prevents them from exercising rights to educational and employment opportunities; denies them access to basic health care; and bars their full participation in civic society.

In short, the HIV entry ban has managed to erect a barrier to just about everything but HIV. Such restrictions have never succeeded in keeping out HIV. In fact, they have failed miserably, undermining public and individual health and straining public coffers. For 22 years the US ban has discouraged immigrants with HIV from seeking care until they end up in emergency rooms with full-blown AIDS; encouraged travelers to leave their antiretrovirals (ARVs) behind and interrupt their treatment regimens when visiting the US; cast those born outside of the US as dangerous and diseased; furthered a false sense of security among US-born citizens that HIV is something "out there;" and generally created a climate conducive to the spread of fear, paranoia, and misinformation.

Some have foregrounded the issue of the cost of removing ban. This emphasis holds HIV to a higher and unfair standard vis-à-vis other health conditions – virtually every individual has or will have some type of health issue that requires care. Furthermore, we must question the cost analysis in the HHS/CDC's Notice of Proposed Rulemaking as it estimates health care expenditures regardless of payer. In actuality, some individuals will secure private insurance, some will pay out-of-pocket, and some, to our great dismay, will go without care or treatment. We therefore contend that the costs generated by the HIVEcon model represent an overestimate of public sector expenditures.

Also unaccounted for in cost estimates are the tangible and intangible resources immigrants with HIV bring with them to the US. Like other immigrants, they pay sales tax and income tax and contribute to the country's rapidly diminishing Social Security reserves. They also bring their skills and talents and intellects and labor – capital we lose every day that the current policy remains in effect. But that's not all the ban is costing us. The International Task Team on HIV-related Travel Restrictions, convened in 2008 by UNAIDS (and on which one of the signatories of these comments served), found that bans on entry, stay, and residence squander resources that could be used on HIV prevention, treatment and care on screening and enforcement.

All in all, the economic and social costs of leaving the HIV entry bar in place are far higher than any that might be accrued by its removal.

Finally, experiences outside the US tell us refute the notion that non-restrictive entry policies lead to high health care expenditures. Brazil, with its relatively generous antiretroviral access and no HIV-related restrictions on entry, stay, or residence has not seen its borders 'overrun' by people seeking treatment from neighboring countries with significantly less access to ARVs.

There was a time when epilepsy was grounds for exclusion, but ultimately medical knowledge prevailed. Similarly, tuberculosis and leprosy (unless active or infectious, respectively) were removed from the list of excludable conditions. Decades later, it is time to take action reflective of the current reality and do the same for HIV infection. Of course, HIV differs from other conditions that are, or have been, grounds for exclusion chiefly in the stigma that continues to adhere to it. We commend HHS/CDC for acknowledging this throughout the Notice of Proposed Rulemaking and for taking this into account when deliberating on the inclusion of HIV testing in the scope of examinations. As noted in the proposal, there is no mandatory testing for other non-excludable serious health conditions therein. Like the HHS/CDC, we too are concerned that results of tests conducted in immigrants' home countries by panel physicians are sometimes reported to local authorities. Likewise, tests administered in the US during the green card application process are available to the Department of Homeland Security. Both here and abroad, family members may be made aware of an applicant's HIV status as a direct result of mandatory HIV testing. We have known all of these scenarios to place people in grave danger and we support the elimination of mandatory HIV testing from these medical examinations. In addition, we urge HHS/CDC (once HIV infection is removed from the definition of communicable disease of public health significance and as a requirement component of the medical examination), to undertake immediate comprehensive communication and education efforts to ensure that all panel physicians, consular staff, and civil surgeons are aware of this change so that practice may immediately follow policy. At the same time, HHS/CDC must work with the Departments of State and Homeland Security to update immigration forms, (including but not limited to the I-693 Form mandating disclosure of HIV status). Those seeking to enter the US and those already here must be informed of the change without delay. HHS/CDC must also notify those who have been denied entry, stay, or residency based on their HIV status that they may reapply. Together with the the State Department, it must work to expunge references to the HIV status of non-nationals who have had their passports stamped with a waiver denoting their HIV status and inform them as to how they may obtain new documents without the waiver stamp.

Once again, we commend HHS/CDC on its proposal to remove an unfounded and unfair barrier. We realize that other barriers exist for immigrants with HIV (the Homeland Security Act, the Personal Responsibillity Work and Opportunity Reconciliation Act, the Patriot Act, the hefty obligations of sponsors, etc.). Lifting the entry bar won't make it easy for people with HIV to immigrate to the US, but it will align US policy with current scientific knowledge, public health practices, and human rights principles.

The HIV entry ban is costly, inhumane, and indefensible and fails even by its own logic. In our work as legal and policy advocates, we have witnessed the ruinous toll it has taken on individuals, families, and communities, and on efforts to address epidemic. We've seen people living with HIV/AIDS die in detention because they were unable to adjust their immigration status. We've watched as they lost out on jobs with good benefits and, lacking those benefits, succumbed to AIDS-related illnesses. We've known individuals whose voices would have been critical in the fight against HIV and AIDS but who were too scared to come forward as visible leaders. We've also known those who, despite this fear and with everything to lose, did come forward and display great courage and leadership in hostile times. We hope HHS/CDC will do the same.

Sincerely,

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